DEPARTMENT OF THE NAVY
BUREAU OF MEDICINE AND SURGERY
WASHINGTON, D.C. 20372-5120

IN REPLY REFER TO
BUMEDINST 4200.2
BUMED-41
5 Oct 90

BUMED INSTRUCTION 4200.2

From: Chief, Bureau of Medicine and Surgery

Subj: CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) FOR HEALTHCARE CONTRACTING

Ref: (a) SECNAVINST 4205.5 (NOTAL)
(b) NAVSUPINST 4205.3 (NOTAL)
(c) NAVSUPINST 4330.7 (NOTAL)
(d) SECNAVINST 4200.27A
(e) SECNAVINST 4200.23A
(f) SECNAVINST 5370.2J

Encl: (1) Sample COTR Nomination Letter
(2) Sample Alternate COTR Nomination Letter
(3) Organization of Health Service Contracting at the Activity Level

1. Purpose. To provide guidance and criteria for COTR duties and responsibilities, authority, selection, training, and organizational placement within the medical and dental treatment facility (MTF and DTF).

2. Applicability. Applies to all MTF and DTF contracting for healthcare. MTFs and DTFs contracting strictly for single provider personal service contracts are not required to comply with the guidance contained in this instruction. Each facility is required to maintain the integrity of centralizing healthcare contracting oversight as well as preserving access to the commanding officer.

3. Definitions

a. Acceptable Quality Level (AQL). The deviation from perfect performance of an individual service output that the Government will allow before deductions and other contractual remedies may be pursued where indicated by performance trends.

b. Administrative Contracting Officer (ACO). The Government official responsible for administering the contract to the extent that the Procuring Contracting Officer (PCO) has delegated contract administration.

c. Alternate Contracting Officer's Technical Representative (ACOTR). An individual who may act in the absence of the COTR for a specific contract, for a specified period of time.

has the authority, either by individual action or by cumulative effect of actions, to change the scope, delivery schedule, cost or fee, labor mix, or other contract terms or conditions.

b. The COTR designation does not change or supersede the established line of authority or responsibility of any organization.

10. Selection of COTR

a. The commanding officer must base COTR selection on the following criteria:

(1) COTR Attributes. Experience has proven that the characteristics most desirable for COTRs are: leadership, integrity, credibility, communicative and analytical skills as well as technical and administrative competence.

(2) Grade, Position, and Experience. The COTR should be of sufficient grade and hold an appropriate position in the organization to influence a contractor's performance. For large NPS contracts, officers in the military grade of 03/04 or civilians in the grade General Service (GS) 9/11 are recommended. He or she must possess sufficient experience or medical background to identify administrative and technical issues, and be able to consult with clinical and QA advisors. At an absolute minimum, medium and small NPS contracts will assign a military officer in the grade of 01/02 or a civilian employee in the grade of GS-7/9, provided the individual possesses the desired qualifications.

(3) Type of Contract or Service. Personal or nonpersonal services contract; clinical or ancillary support services.

(4) Size, Scope, and Complexity of Contract. What is the dollar value of the contract? How many contracted employees are involved? Will performance be onsite or offsite? What is the degree of monitoring or surveillance required?

(5) Extent of Contract Administration. Will the contract require contract management expertise or general administrative expertise? Will the KO be located in-house or regional? Indicate the number of contract options.

(6) Resources. Military or civilians may be assigned as primary COTR or as a collateral duty assignment. Selection is based on qualifications of personnel, training, and experience in healthcare and contracting.

11. Training and Professional Development

a. COTR Training

(1) COTRs appointed to NPS healthcare contracts must be certified by attending the NAVSUPSYSCOM approved COTR training course presented by the Naval Medical Logistics Command (NAVMEDLOGCOM) and designed specifically for health services contracts. This fundamental training is required for all who are scheduled to fill a COTR billet for the first time.

(2) COTRs required to attend the NAVMEDLOGCOM COTR training course must participate in subsequent annual NAVMEDLOGCOM sponsored local training sessions and seminars for information sharing and update, group discussions, case studies, and more extensive contract administration and management training. Experienced COTRs should be prepared to present information and lessons learned.

(3) Classes on time and stress management, risk management and quality assurance, leadership, organizational and group dynamics, management of change, and conflict resolution are suggested.

(4) COTRs must be recertified after an absence of 3 years.

b. Professional Development

(1) COTRs should progress through a series of assignments. Recommend initial collateral duty assignments of monitoring and surveillance, followed by an assignment to a small less complex contract, and finally, the appointment to a larger more diverse contract.

(2) Persons selected as the head of a health services contracting division should be cultivated from COTR ranks and have documented ability of performance and meet specifications in paragraph 12 of this instruction.

12. Organization

a. The health service contracting division will be organized under the material management department. The head of the health services contracting division must meet the following criteria: (Experience may be substituted for education.)

(1) Possess at least a bachelor's degree in health services or business administration.

(2) Have at least 2 years of healthcare management experience at the division officer level, interacting with the directories of medicine, surgery, and nursing.

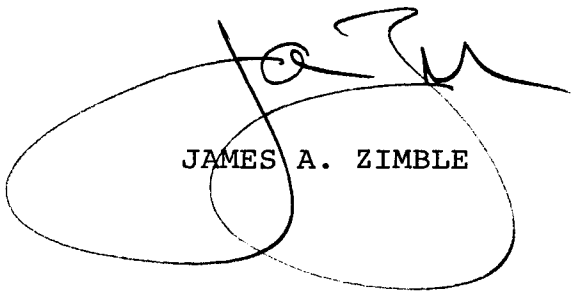
(3) Technically competent in the healthcare services contracting field.

(4) Possess the administrative and management skills to oversee the contracting functions.

b. The health service contracting division must be supported by advisors to assist the COTR with each contract. These advisors, not permanently assigned to the division, must exercise a team approach with the COTR to ensure that the contractor is evaluated fairly on the administrative, clinical, and QA aspects of the contracts. The support staff will consist of:

(1) A clinical advisor. This person must be skilled in the subspecialty contracted. The advisor must interface directly with senior hospital and contractor staff to ensure the day-to-day delivery of contracted healthcare meets or exceeds applicable standards. This individual is normally a physician or nurse and is the key individual on the COTR team during the implementation phase.

(2) A QA evaluator. This individual must be assigned from the QAO. The evaluator must have direct involvement in all healthcare contracts. The individual should have sufficient experience to ensure the contracted care is evaluated in the same fashion and at the same level as the other departments within the facility.



JAMES A. ZIMBLE

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SAMPLE COTR NOMINATION LETTER

From: Commanding Officer, _____
To: Contracting Officer, _____

Subj: NOMINATION OF CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)

Ref: (a) BUMEDINST 4200.2

1. Per reference (a), I hereby nominate _____ as the COTR for the contract resulting from requisition number _____ to acquire _____ services in support of _____.

2. _____ is qualified to perform the COTR duties.

3. _____ possesses the technical knowledge and project or program office expertise required.

4. _____ title, code, business address, and phone number are: _____.

5. _____ has graduated from the Navy approved COTR training within the last 3 years.

Place of training: _____

Dates of training: _____

6. The performance rating elements for _____ will (will not) include the COTR function (if not, provide rationale).

Signature: _____ Date: _____
Commanding Officer

COTR Acknowledgement:

I have reviewed and understand my nomination and the duties, responsibilities, and limitations of the COTR function.

Signature: _____ Date: _____
COTR

Contracting Officer Acceptance:

Signature: _____ Date: _____

SAMPLE ALTERNATE COTR NOMINATION LETTER

From: Commanding Officer, _____
To: Contracting Officer, _____

Subj: NOMINATION OF ALTERNATE CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (ACOTR)

Ref: (a) BUMEDINST 4200.2

1. Per reference (a), I hereby nominate _____ as the ACOTR for the contract resulting from requisition number _____ to acquire _____ services in support of _____.

2. _____ is qualified to perform the ACOTR duties.

3. _____ possesses the technical knowledge and project or program office expertise required.

4. _____ title, code, business address, and phone number are: _____.

5. _____ has graduated from the Navy approved COTR training within the last 3 years.

Place of training: _____

Dates of training: _____

6. The performance rating elements for _____ will (will not) include the COTR function (if not, provide rationale).

Signature: _____ Date: _____
Commanding Officer

COTR Acknowledgement:

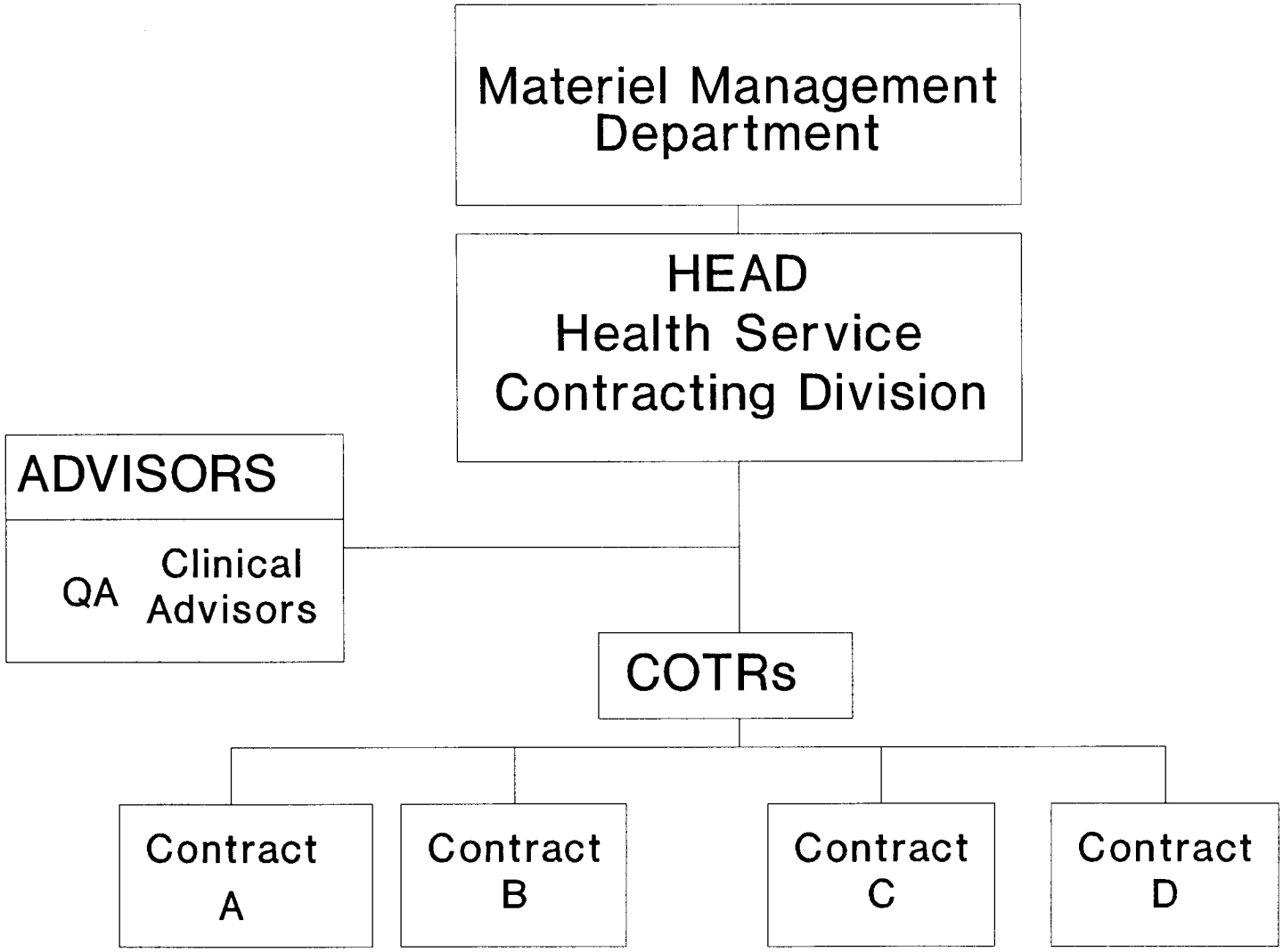
I have reviewed and understand my nomination and the duties, responsibilities, and limitations of the COTR function.

Signature: _____ Date: _____
COTR

Contracting Officer Acceptance:

Signature: _____ Date: _____

Organization of Health Service Contracting
at the Activity Level



d. Constructive Change. An unauthorized change made simply by the action or inaction of one or both parties to a contract.

e. Contract. An agreement between the Government and contractor expressing terms and conditions affecting price, performance, and delivery. The agreement includes an offer and acceptance between competent parties stated in clear terms and conditions.

f. Contract Administration Plan (CAP). The plan that establishes procedures to ensure satisfactory administration of healthcare service contracts either retained by the contracting officer or delegated to an authorized representative other than the contract administrative offices (CAO).

g. Contract Modification. A written action changing some parts of a contract.

(1) Administrative Change. A modification signed only by the contracting officer and having no effect on price, performance, or delivery.

(2) Change Order. A written order signed by the contracting officer directing the contractor to make changes that the changes clause of the contract authorizes the contracting officer to make without the consent of the contractor.

(3) Supplemental Agreement. A contract modification signed by both contractor and contracting officer to make a change to the contract. Usually affects price, performance, or delivery.

h. Contracting Officer (KO). Government official who, by position or appointment, is authorized to bind the Government in contracts acting as an agent for the Government.

i. Contracting Officer's Technical Representative (COTR). The Government employee responsible for assuring contractor performance through audit, documentation, and liaison with the contractor and the contracting officer. The COTR is nominated by the commanding officer and is placed by name, in the contract by the contracting officer. The COTR has no authority to resolve contract disputes or obligate funds.

j. Contractor. A private, non-Government party who enters into a contract with the Government.

k. Implementation Phase. One of two phases that occur during the performance life of a contract after award. The implementation phase is one of high intensity involvement requiring a team approach that includes the COTR, a clinical

advisor skilled in the subspecialty contracted, and the quality assurance office (QAO). The key individual during this phase is the clinical advisor. (See Maintenance Phase.)

l. Maintenance Phase. The second of two phases that occur after contract award. The emphasis in this phase is administrative and centers on routine monitoring and surveillance of contractor performance. The key individual during this phase is the COTR. (See Implementation Phase.)

m. Nonpersonal Services Contract (NPS). A contract under which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

n. Performance Requirements Summary (PRS). A list of the primary products (i.e., service outputs) of the contract that will be evaluated by the Government to assure contract performance standards are met by the contractor.

o. Performance Work Statement (PWS). A document that accurately describes the Government's needs for essential or technical services in terms of the desired output or end product. Typically, the PWS becomes a part of the procurement solicitation package and includes standards of performance and AQL.

p. Personal Services Contract (PSC). A contract that makes the contractor personnel appear to have an employer-employee relationship with the Government. The Government retains management authority of the personnel providing the services.

q. Procuring Contracting Office (PCO). The contracting activity, office, or individual responsible for the award of the contract.

r. Quality Assurance (QA). Those actions taken by the Government to check goods or services listed on the PRS to determine if the requirements of the PWS are met.

s. Quality Assurance Officer. The individual assigned to ensure that the services meet the requirement of the PWS.

t. Quality Control. Those actions taken by a contractor to control the provision of services so the requirements of the PWS are met.

u. Service Contract. A contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than furnish an end item of supply. A service contract may be either personal or nonpersonal.

v. Technical Specialist. One who is devoted to a particular or a specific field of study or profession.

w. Technical Advisor. One who offers advice in an official or professional capacity on healthcare issues. The advice may or may not be in the advisors area of specialty.

4. Background

a. Contracting, as an alternate source of care to meet the growing demand for healthcare from our beneficiary population, requires the establishment of a healthcare contracting organization and guidelines for the assignment of COTRs within our MTFs and DTFs.

b. Recent initiatives of the Navy Inspector General, the Blue Ribbon Panel, and Navy Supply Systems Command (NAVSUPSYSCOM) have corroborated the need for this guidance. COTRs with limited experience have been faced with clinical and administrative issues they have been ill equipped to solve. Additionally, healthcare contracting initiatives have been fragmented within the organization making command oversight difficult.

c. References (a) and (b) provide Navy-wide guidance concerning the duties, responsibilities, and limitations of the COTR. Reference (c) requires the development of a CAP for service contracts and the appointment of a COTR for technical guidance, monitoring, and surveillance.

5. Policy

a. All nonpersonal health service contracts must be monitored by an appointed COTR.

b. A personal service contract with an individual employee whose performance is monitored by a technical specialist at a facility will not require an appointed COTR, i.e., contract dentist monitored by a Navy dentist or contract radiologist monitored by a Navy radiologist, etc. For these contracts, the technical specialist will provide assistance to the ACO.

c. Personal services contracts that require services of multiple employees or varied types of employees acquired by contract with a personnel agency will be monitored by an appointed COTR.

d. To ensure the most appropriate and qualified COTRs are assigned to health service contracts, all individuals responsible for evaluating and nominating personnel for COTR duties will conduct their evaluations based on the criteria contained in this instruction. Specifically, this instruction:

(1) Establishes a policy for nominating COTRs for health service contracts.

(2) Requires the establishment of a health services contracting organization within all MTFs and DTFs receiving contracted services.

(3) Requires the provision of permanent and support staff based on the level of contracting actions.

6. Discussion

a. The commanding officer of the MTF or DTF retains the responsibility of providing quality healthcare regardless of whether it is Government or contractor provided.

b. All MTFs and DTFs having contracted for NPS healthcare contracts will establish a health services contracting division to oversee and coordinate the healthcare contracting program. The division head will be designated as the head, health services contracting division and assigned under the material management department. At smaller activities, the head, health services contracting division may be an additional duty assignment. The organization of this division must allow appropriate and regular access to the commanding officer for contractual information interchange.

c. Proper selection and placement of the COTR by the commanding officer is an important key to a successful contracting effort. Commanding officers should select the COTR with the same care and consideration as that given to any key position within the organization.

d. COTR assignments should take into account the phases of an awarded contract. The implementation phase (high intensity involvement) requires a team approach that includes the COTR, a clinical advisor skilled in the subspecialty contracted and the QAO. In the maintenance phase (after 6 months to 1 year of successful performance) the high intensity role shifts from daily interaction and clarification to a settled-in level of acceptable performance. In this phase, the emphasis is on the administrative aspects of routine monitoring and surveillance of the contractor's performance. At this point, the role of the clinical advisor and QAO becomes that of consultants to the COTR.

7. Procedure. All facilities contracting for healthcare service will adhere to the guidance and procedures in this instruction. Any variations must receive Bureau of Medicine and Surgery (BUMED) approval.

8. Duties and Responsibilities

a. The COTR

(1) Serves as the command's technical liaison for the contract, providing technical advice or clarification of the statement of work when requested by the contractor or the KO.

(2) Inspects, rejects, and initiates recommended deductions for less than full performance.

(3) Accomplishes on-site surveillance.

(4) Notifies the KO of any anticipated overrun of the estimated price or contract noncompliance.

(5) Monitors the use of Government furnished material.

(6) Ensures that the contractor meets the PWS requirements.

(7) Reviews and certifies contractor invoices to ensure appropriateness of types and quantities of services being performed. Complies in a timely manner to ensure the payment due dates set forth in the contract are met.

(8) Performs other duties as designated in the CAP of the contract.

(9) Complies with reference (d) concerning the proper use of contractor personnel.

(10) Complies with reference (e) regarding correspondence and oral communication with contractors concerning Department of the Navy contractual matters.

(11) Complies with appropriate personal behavior as outlined in reference (f) concerning standards of conduct and conflict of interest.

(12) Maintains complete and accurate contracting files for periodic review by the KO.

b. The COTR's duties are not redelegable. An ACOTR may be appointed to act only in the absence of the COTR. The COTR may (and in most complex contracts must) be provided with sufficient support personnel to assist in monitoring and surveillance.

c. The COTR is **prohibited** from:

(1) Making commitments or promises to contractors relating to award of contracts.

(2) Writing contract requirements around the product or capacity of one source.

(3) Soliciting proposals.

(4) Modifying the stated terms of the contract.

(5) Issuing instructions to contractors to start or stop work.

(6) Approving items of cost not specifically authorized by the contract.

(7) Directing changes.

(8) Executing supplemental agreements.

(9) Rendering a decision on any dispute or any questions of fact under the disputes provision of the contract.

(10) Taking any action with respect to termination, except to notify the KO.

(11) Authorizing delivery or disposition of Government furnished property.

(12) Allowing the contractor to perform work outside the scope of the contract.

(13) Giving guidance to contractors, either orally or in writing, which might be interpreted as a change in scope or terms of the contract.

(14) Discussing procurement plans or any other advance information that might provide preferential treatment to one firm over another when a solicitation is issued for a competitive procurement.

d. The commanding officer:

(1) Nominates a COTR from within the command for each approved healthcare contract. Nominations should be made during the acquisition planning process to enable the individual to successfully monitor contractor's performance. Nominations must be signed by the commanding officer of the requiring activity and submitted to the KO in the format set forth in enclosure (1).

(2) Nominates an ACOTR in writing, from within the command for each approved healthcare contract. The nomination

for ACOTR must also be signed by the commanding officer of the requiring activity and submitted to the KO in the format set forth in enclosure (2).

(3) Maintains close liaison with assigned COTR to remain fully apprised of contractor performance and identified potential problems to ensure appropriate and timely action is taken.

(3) Assigns a clinical advisor and a QA coordinator who will assist the COTR with the QA review required to ensure the delivery of contracted healthcare meets or exceeds applicable standards.

(4) Determines if COTR duties are being performed in a satisfactory manner. If duties are not being performed in a satisfactory manner, immediately take corrective action including replacing the COTR, if required and notifying the KO.

(5) Includes in periodic performance evaluation and fitness report, performance as a COTR regardless of their profession or specialty.

e. The contracting officer:

(1) Officially appoints the COTR and ACOTR in writing and specifically designates the COTR in the contract as the only authorized representative to act on the KO's behalf. Provides specific duties, responsibilities, restrictions, qualifications, and feedback procedures in the appointment letter. Only one COTR can be assigned per contract. A COTR **may** be assigned to more than one contract.

(2) Maintains cognizance of the performance of COTRs and ACOTRs and takes the necessary action when a COTR, ACOTR, is not performing properly. Requests the requiring activity to consider COTR performance in the individual's performance appraisal and provides input.

(3) Ensures the nominated COTR and ACOTR holds a position of responsibility commensurate with the complexity and technical requirements of the contract.

(4) Ensures the nominees have received approved COTR training and understand the duties, responsibilities, and limitations of the position.

9. Authority of COTR

a. The authority of the COTR is restricted by references (a) and (b) to providing technical direction, clarification, and administrative duties within the scope of the contract. No COTR